

MUTUAL RELEASE AGREEMENT

This Mutual Release Agreement ("Mutual Release Agreement") (for reference dated January 26, 2004), is made and entered into by, between and among LEHMAN ALI INC., a Delaware corporation ("Lehman") HARVEST SV/PEN, LTD, a Texas limited partnership ("Harvest"), HARVEST SV/PEN GP, LLC, a Texas limited liability company ("Harvest LLC") (both Harvest and Harvest LLC sometimes being called, collectively, the "Harvest Entities"), GREENWOOD PARTNERS, a Texas general partnership ("Greenwood"), SUNNYVALE LLC, a California limited liability company ("Sunnyvale" or "Debtor"), FORUM DEVELOPMENT GROUP, LLC, a Georgia limited liability company ("Forum"), JAMES H. BARON, the Court appointed Receiver (the "Receiver") for certain real property owned by Sunnyvale, the CITY OF SUNNYVALE, CALIFORNIA (the "City"), and THE REDEVELOPMENT AGENCY FOR THE CITY OF SUNNYVALE, CALIFORNIA (the "Agency"), who shall collectively be called the "Parties". This Agreement shall be effective according to its terms only upon the fulfillment of the conditions described with more particularity below, to wit: the approval of this Agreement by the Bankruptcy Court (defined below), the City, and the Agency, and the closing of the sale of the Property (defined below).

RECITALS

WHEREAS, Lehman and Harvest have entered into that certain "Term Sheet for Purchase of Certain Assets" (the "Term Sheet"), whereby Lehman and Harvest have set forth the non-binding parameters of a transaction under which Harvest will sell to Lehman (or its designee) all of Harvest's rights, title, and interests in and to that certain tract of real property located in Sunnyvale, California having a street address of 2510 Town Center Drive, to be described with more particularity in the definitive documents to be prepared and executed to evidence said purchase and sale, together with all improvements thereon and all of Harvest's rights, title and interests in and to certain operating agreements pertaining to the Property (collectively the "Property"), which purchase and sale shall be subject to the terms and conditions set forth in binding definitive documents to be drafted to evidence such transaction; and

WHEREAS, Lehman and Harvest have acknowledged, in pertinent part, that one of the conditions for going forward with such purchase and sale transaction and the preparation of such definitive documents is the entering into of a standstill agreement between and among the Parties hereto (the date of which was originally stated to be on or before January 20, 2004, but which date Lehman and Harvest have agreed to extend to the latest date affixed below the signatures of the Parties set forth below, and as evidenced by their signatures set forth below), the effectiveness of which shall be subject only to whatever approvals thereof required, if any, respectively, from: the bankruptcy court in which the Chapter 11 bankruptcy case of Debtor Sunnyvale is pending (the "Bankruptcy Court"); the District Court in which litigation is pending between, inter alia, Sunnyvale, Greenwood and the Harvest Entities (the "District Court Action" as defined below); the Superior Court of Santa Clara County, California in which the case is pending whereby the Receiver was initially appointed as Receiver for the real property of Sunnyvale LLC commonly known as the Sunnyvale Town Center Mall (the "Sunnyvale Mall"), located on a tract of land in downtown Sunnyvale, California, in Santa Clara County (the "State Court"), which appointment was later confirmed and continued by the Bankruptcy Court; the Agency, the City, and/or such other governing body whose approval shall be required to make such agreement binding and enforceable by and against the City and the Agency (any "Other Governing Body"), wherein all parties agree to standstill and refrain from pursuing or instituting, any litigation, administrative action or other proceeding relating to the Sunnyvale Mall or the Property or its

proposed redevelopment as can maximally be achieved without permanently prejudicing the rights of any party to such litigation, administrative action or other proceeding through March 1, 2004, or the closing of the contemplated sale of Property, whichever occurs earlier (the “Standstill Agreement”); and

WHEREAS, Lehman and Harvest have also acknowledged , in pertinent part, that one of the conditions for going forward with such purchase and sale transaction and the preparation of such definitive documents is the entering into of mutual releases between and among the Parties (the date of which was originally stated to be on or before January 20, 2004, but which date Lehman and Harvest have agreed to extend to the latest date affixed below the signatures of the Parties set forth below, and as evidenced by their signatures set forth below), the effectiveness of which shall be subject only to whatever approvals thereof required, respectively, from the Bankruptcy Court, the District Court, the State Court, the City, the Agency, and/or Other Governing Body, and to the closing of the sale of the Property, wherein each of such parties fully and generally release the Harvest Entities and Greenwood Partners (“Greenwood”) and the Harvest Entities and Greenwood fully and generally releases each such party from any past, present or future claims of whatsoever kind and character arising out of or relating to the Sunnyvale Mall and the Property (the “Mutual Release Agreements”) and which specifically provides for the dismissal of all pending administrative actions, litigation or other proceeding against the Harvest Entities and Greenwood with prejudice and the release of the net escrow funds to Sunnyvale LLC and Greenwood, split evenly, subject to the claims of the escrow agent, with the scope of such releases to be more particularly defined in the Mutual Release Agreements; and

WHEREAS, Lehman and Harvest have further acknowledged and agreed that the contemplated definitive sale and purchase agreement and other documents would be prepared by, and the contemplated purchase and sale of the Property would occur on or before February 11, 2004 (the “Conditional Effective Date” as described below), conditioned only upon the happening of each of the events described below (the “Events for Effectiveness”); and

WHEREAS, Sunnyvale and the Harvest Entities (along with Greenwood and Republic Title Company (“Republic”)) are parties to that certain civil action pending in the United States District Court for the Central District of California, Western Division, styled Sunnyvale, LLC v. Greenwood Partners, et. al., Civil Action File No. 03-CV-5632-SVW the “District Court Action,” in which Lehman is an intervenor, and in which, among other claims, (i) Sunnyvale has asserted claims against Greenwood and the Harvest Entities for, *inter alia*, alleged misappropriation and misuse of confidential and trade secret information, breach of contract, unjust enrichment, intentional interference with economic relationships, (ii) Sunnyvale has sought remedies against Greenwood and the Harvest Entities that include the imposition of a constructive trust against the Property which is the subject matter of the Term Sheet and for an accounting with respect to same, (iii) Sunnyvale has disputed the claim asserted against it in the Bankruptcy case by Greenwood, (iv) Sunnyvale has asserted a claim against Republic for the turnover of the escrow deposit made by Greenwood in connection with the failed sale of Sunnyvale’s Mall property to Greenwood, (v) Greenwood has asserted a claim to its escrow deposit made in connection with the failed sale of Sunnyvale Mall, and (vi) Republic has asserted a counterclaim to interplead the escrow deposit into the District Court and for fees and expenses incurred by it; and

WHEREAS, Sunnyvale, Greenwood and the Harvest Entities are parties to, and Lehman is an intervenor in, that portion of the District Court Action which is presently on appeal to the Ninth Circuit

Court of Appeals, pertaining to the order entered in the District Court Action whereby Sunnyvale's claims for the imposition of a constructive trust, injunction and accounting were dismissed by the District Court for failure to state claims upon which relief could be granted (the "Partial Appeal of the District Court Action"); and

WHEREAS, in Sunnyvale's Bankruptcy Case, in which Sunnyvale is a debtor in possession, and as to which the Receiver is responsible for the day-to-day operations of Debtor's real property known as the Sunnyvale Mall, Harvest and Greenwood have, among other things, filed objections to Debtor's Plan of Reorganization and Disclosure Statement filed in connection therewith, and respect to which the Receiver has previously asserted claims against Harvest for the payment of so-called "Common Area Maintenance" or "CAM" charges assertedly due and owing by Harvest as the successor-in-interest owner of the Property which is the subject matter of the Term Sheet (collectively the "Bankruptcy Case Related Matters"); and

WHEREAS, Sunnyvale, Lehman and Harvest are, among other things, involved in formal and informal administrative actions or proceedings before the City or the Agency which affect or might reasonably construed to directly affect the property rights or interests of each other (collectively the "City and Agency Related Administrative Matters"); and

WHEREAS, the Parties hereby desire to extricate themselves from the foregoing matters, including any past, present or future claims of whatsoever kind and character arising out of or relating to the Sunnyvale Mall and the Property in such manner as to eliminate any claim of liability or harm by Harvest or Greenwood against the other Parties, or by the other Parties against Harvest or Greenwood, on the terms and conditions described in these recitals and hereafter; and

WHEREAS, by entering into this Agreement, none of the Parties are admitting any liability in connection with any matter; and

WHEREAS, each of the Parties hereto believes that it is in their respective interests, and in the interests of their respective constituents, to enter into this Mutual Release Agreement in order to allow for the preparation of such definitive documents in connection with such purchase and sale transaction, and to facilitate the consummation of such purchase and sale transaction, and subject to the conditions described herein; and

WHEREAS, each of the Parties hereto acknowledges that full, valid, and binding consideration exists for the execution of this Agreement and that such consideration consists of the mutual promises contained herein and in the agreements attached as Exhibits hereto (the "Related Documents"), and the performance by each of the Parties of their respective mutual and independent covenants and representations as set forth herein;

NOW, THEREFORE, intending to be legally bound, and for, and in consideration of, the terms, conditions and mutual obligations set forth herein and in the Related Documents, including the performance by each of the Parties of their respective mutual and independent covenants and representations as set forth herein, and understanding the meaning and legal effect of entering into this Mutual Release Agreement, the Parties hereto stipulate, agree, warrant, and represent as follows:

1. Conditioned Effectiveness of Agreement. Each Party acknowledges, agrees, and represents to each of the other Parties that the effectiveness of this Mutual Release Agreement shall be conditioned only upon the happening of each of the following events (the “Events for Effectiveness”) on or before February 11, 2004 (the “Conditional Effective Date”), that upon the happening of the last of said Events for Effectiveness on or before the Conditional Effective Date this Mutual Release Agreement shall become binding and effective upon each Party, in accordance with its terms, and that upon the non-happening of all of said Events For Effectiveness on or before the Conditional Effective Date, this Mutual Release Agreement shall be void *ab initio* and unenforceable by or against any of the Parties hereto:
 - a. The execution of the Standstill Agreement by each of the Parties;
 - b. The execution of this Mutual Release Agreement by each of the Parties;
 - c. The entry by the Bankruptcy Court of a final order granting and approving the motion of Sunnyvale for authority for Sunnyvale and, as may be required or granted, the Receiver, to execute the Standstill Agreement and this Mutual Release Agreement and to implement and carry out the terms hereof and the settlement of claims by and against the Harvest Entities and Greenwood contemplated hereby in a form acceptable to Harvest and Greenwood;
 - d. The approval by the City Council of the City of the execution of the Standstill Agreement and this Mutual Release Agreement by the Mayor of the City or another authorized representative of the City, the execution of same, and the implementation and carrying out the terms hereof and the settlement of claims by and against the Harvest Entities and Greenwood contemplated hereby;
 - e. The approval by the Governing Board of the Agency of the execution of the Standstill Agreement and this Mutual Release Agreement by the Chair of the Agency, the Mayor of the City or another authorized representative of the Agency, the execution of same, and the implementation and carrying out the terms hereof and the settlement of claims by and against the Harvest Entities and Greenwood contemplated hereby;
 - f. The execution and delivery of the documents and funds contemplated by the Term Sheet;
 - g. The consummation of the sale of the Property contemplated by the Term Sheet;
 - h. The execution of stipulations of dismissal with prejudice of the District Court Action and the Partial Appeal of the District Court Action by counsel for Sunnyvale, Greenwood, the Harvest Entities, Lehman and Republic; and
 - i. The withdrawal/dismissal of all claims and/or contested matters asserted by Greenwood, the Harvest Entities, or any of them, against Sunnyvale in the Bankruptcy Case.
2. Representations as to Authority to Execute and Perform. Each Party acknowledges, agrees, and represents to each of the other Parties that such Party has the power and authority to enter into this Mutual Release Agreement, or, as described below, will immediately seek to obtain such authority

from the applicable Court that has the power to grant same. For each Party, its present authority to execute this Mutual Release Agreement and bind itself to the provisions hereof, and/or the status of its efforts to obtain authority to bind itself to the provisions hereof, are set forth below:

- a. Harvest – has authority to execute and bind itself, subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein;
- b. Harvest LLC – has authority to execute and bind itself, subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein;
- c. Greenwood – has authority to execute and bind itself, subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein;
- d. Lehman – has authority to execute and bind itself, subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein;
- e. Forum – has authority to execute and bind itself, subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein;
- f. Sunnyvale – has authority to execute and bind itself, subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein, and further subject to such approval as may be required by the Bankruptcy Court after notice and a hearing, which approval will be sought by means of a hearing currently set to be held on February 4, 2004, which is before the Conditional Effective Date, and which approval will be in the form of an order entered before the Conditional Effective Date granting and approving the motion of Debtor Sunnyvale for authority for Sunnyvale and , as may be required or granted, the Receiver to execute the Standstill Agreement and this Mutual Release Agreement and to implement and carry out the terms hereof and the settlement of claims by and against Harvest and Greenwood contemplated hereby;
- g. The Receiver – has authority to execute and bind himself, subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein to implement and carry out the terms hereof and the settlement of claims by and against Harvest and Greenwood contemplated hereby, and subject to whatever authority may be required and may be granted by the Bankruptcy Court as described above;
- h. The City – has authority, through a majority vote of its governing body, to execute and bind itself, subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein, after notice to the public and provision for an opportunity for public hearing thereon, before the Conditional Effective Date. The minutes of the meeting shall reflect the action taken by the governing body;
- i. The Agency – has authority, through a majority vote of its governing body, to execute and bind itself, subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein, after notice to the public and provision for an

opportunity for a public hearing thereon, before the Conditional Effective Date. The minutes of the meeting shall reflect the action taken by the governing body.

3. Further Assurances of Authority to Execute and Perform. Consistent with and subject only to the foregoing paragraph 2, each Party, by his or its signature hereto, represents, as applicable, that:
 - a. it is a duly organized, validly existing entity in good standing under the laws of the pertinent jurisdiction governing its organization and existence;
 - b. he or it has the power and authority to execute, deliver and perform its obligations under this Mutual Release Agreement;
 - c. the execution, delivery and performance of this Mutual Release Agreement by such Party has been consented to and approved by it in accordance with its organizational and governing documents;
 - d. except as to Sunnyvale, the execution, delivery and performance of this Mutual Release Agreement by such Party does not and will not result in a breach of or constitute or cause a default under any indenture, contract, or instrument to which such Party is a party; and
 - e. this Mutual Release Agreement constitutes a valid and legally binding obligation of such Party, and is enforceable against such Party in accordance with its terms.
4. The Harvest Entities' and Greenwood's Release of Sunnyvale, Lehman, Forum and the Receiver. Conditioned upon the happening of the Events of Effectiveness on or before the Conditional Effective Date, and in consideration of the terms and provisions of this Mutual Release Agreement, Harvest, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, Harvest LLC, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and Greenwood, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, each do hereby relieve, release and forever discharge (i) Lehman, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, (ii) Sunnyvale, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, (iii) Forum, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and (iv) the Receiver, and, as applicable, its and his present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries,

affiliates, predecessors, successors, and/or assigns, and each of them, of and from any and all damages, debts, claims, demands, liabilities, obligations, causes of action and rights, attorneys' fees, costs and expenses of every nature, character and description, whether known or unknown, either now accrued or hereafter maturing (collectively "Claims"), which each respective releasing party may have had or claims to have had or now has or claims to have, or hereafter may have or assert to have, by reason of any act, omission, matter, cause, fact, or thing done in connection with, arising out of, or relating to any of the matters described in the Recitals portion of this Mutual Release Agreement, and/or the Sunnyvale Mall or its proposed redevelopment or the Property, including, without limiting the generality of the foregoing, any Claims which were or could have been asserted in the District Court Action, in the Partial Appeal of the District Court Action, in the Bankruptcy Court in the Bankruptcy Case—including any Bankruptcy Case Related Matters, before the City or the Agency—including any City and Agency Related Administrative Matters, or before any other court or administrative agency or tribunal, any Claims arising out of or related to the commencement or continuation of any of the aforementioned actions and matters. This release shall not in any way release, affect, reduce or limit any obligations of Sunnyvale, Lehman, Forum, the Receiver, and each of them, under this Mutual Release Agreement or any agreements or documents executed in connection with the sale of the Property contemplated by the Term Sheet, and any covenants, representations or warranties set forth in any such agreements or documents shall be governed by the provisions of said agreements and not this Mutual Release Agreement.

5. Sunnyvale's, Lehman's, Forum's and the Receiver's Release of the Harvest Entities and Greenwood. Conditioned upon the happening of the Events of Effectiveness on or before the Conditional Effective Date, and in consideration of the terms and provisions of this Mutual Release Agreement, Sunnyvale, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, Lehman, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, Forum, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and the Receiver, and, as applicable, its and his present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, each do hereby relieve, release and forever discharge (i) Harvest, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and each of them, (ii) Harvest LLC, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and each of them, and (iii) Greenwood, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors,

successors, and/or assigns, and each of them, of and from any and all damages, debts, claims, demands, liabilities, obligations, causes of action and rights, attorneys' fees, costs and expenses of every nature, character and description, whether known or unknown, either now accrued or hereafter maturing (collectively "Claims"), which each respective releasing party may have had or claims to have had or now has or claims to have, or hereafter may have or assert to have, by reason of any act, omission, matter, cause, fact, or thing done in connection with, arising out of, or relating to any of the matters described in the Recitals portion of this Mutual Release Agreement, and/or the Sunnyvale Mall or its proposed redevelopment or the Property, including, without limiting the generality of the foregoing, any Claims which were or could have been asserted in the District Court Action, in the Partial Appeal of the District Court Action, in the Bankruptcy Court in the Bankruptcy Case—including any Bankruptcy Case Related Matters, before the City or the Agency—including any City and Agency Related Administrative Matters, or before any other court or administrative agency or tribunal, any Claims arising out of or related to the commencement or continuation of any of the aforementioned actions and matters. This release shall not in any way release, affect, reduce or limit any obligations of Harvest, Harvest LLC, Greenwood, and each of them, under this Mutual Release Agreement or any agreements or documents executed in connection with the sale of the Property contemplated by the Term Sheet, and any covenants, representations or warranties set forth in any such agreements or documents shall be governed by the provisions of said agreements and not this Mutual Release Agreement.

6. The Harvest Entities' and Greenwood's Release of the City and the Agency. Conditioned upon the happening of the Events of Effectiveness on or before the Conditional Effective Date, and in consideration of the terms and provisions of this Mutual Release Agreement, Harvest, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, Harvest LLC, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and Greenwood, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, each do hereby relieve, release and forever discharge the City, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and each of them, and the Agency, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and each of them, of and from any and all damages, debts, claims, demands, liabilities, obligations, causes of action and rights, attorneys' fees, costs and expenses of every nature, character and description, whether known or unknown, either now accrued or hereafter maturing (collectively "Claims"), which each respective releasing party may have had or claims to have had or now has or claims to have, or hereafter may have or assert to have, by reason of any act, omission, matter, cause, fact, or thing done in connection with, arising out of, or relating to any of the matters described in the Recitals portion of this Mutual Release

Agreement, and/or the Sunnyvale Mall or its proposed redevelopment or the Property, including, without limiting the generality of the foregoing, any Claims which were or could have been asserted in the Bankruptcy Court in the Bankruptcy Case—including any Bankruptcy Case Related Matters, before the City or the Agency—including any City and Agency Related Administrative Matters, or before any other court or administrative agency or tribunal, any Claims arising out of or related to the commencement or continuation of any of the aforementioned actions and matters. This release shall not in any way release, affect, reduce or limit any obligations of the City, the Agency, and each of them, under this Mutual Release Agreement or any agreements or documents executed in connection with the sale of the Property contemplated by the Term Sheet, and any covenants, representations or warranties set forth in any such agreements or documents shall be governed by the provisions of said agreements and not this Mutual Release Agreement.

7. The City's and the Agency's Release of the Harvest Entities and Greenwood. Conditioned upon the happening of the Events of Effectiveness on or before the Conditional Effective Date, and in consideration of the terms and provisions of this Mutual Release Agreement, the City, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and the Agency, on behalf of itself, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, each do hereby relieve, release and forever discharge (i) Harvest, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and each of them, (ii) Harvest LLC, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and each of them, and (iii) Greenwood, and, as applicable, its present and former members, partners, shareholders, principals, employees, agents, representatives, administrators, attorneys, representatives, officers, directors, subsidiaries, affiliates, predecessors, successors, and/or assigns, and each of them, of and from any and all damages, debts, claims, demands, liabilities, obligations, causes of action and rights, attorneys' fees, costs and expenses of every nature, character and description, whether known or unknown, either now accrued or hereafter maturing (collectively "Claims"), which each respective releasing party may have had or claims to have had or now has or claims to have, or hereafter may have or assert to have, by reason of any act, omission, matter, cause, fact, or thing done in connection with, arising out of, or relating to any of the matters described in the Recitals portion of this Mutual Release Agreement, and/or the Sunnyvale Mall or its proposed redevelopment or the Property, including, without limiting the generality of the foregoing, any Claims which were or could have been asserted in the Bankruptcy Court in the Bankruptcy Case—including any Bankruptcy Case Related Matters, before the City or the Agency—including any City and Agency Related Administrative Matters, or before any other court or administrative agency or tribunal, any Claims arising out of or related to the commencement or continuation of any of the aforementioned actions and matters. This release shall not in any way release, affect, reduce or limit any obligations of Harvest, Harvest LLC, Greenwood, and each of them, under this Mutual Release

Agreement or any agreements or documents executed in connection with the sale of the Property contemplated by the Term Sheet, and any covenants, representations or warranties set forth in any such agreements or documents shall be governed by the provisions of said agreements and not this Mutual Release Agreement.

8. Intention of the Parties to Provide “General Releases”. It is the intention and agreement of the parties in executing this Mutual Release Agreement and in giving and/or receiving the releases called for by this Mutual Release Agreement, that each such release is a general release as to the Claims released hereby, and extends to all such Claims whether or not claimed or suspected by the parties hereto, to and including the date of execution hereof. In furtherance of this intention, each party acknowledges that it is familiar with Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

9. Waiver by the Parties of Benefits of Cal. Civ. Code § 1542. Each Party hereto waives and releases any rights or benefits which it has or may have under Section 1542 of the California Civil Code or any similar statute or principle to the full extent that it may lawfully waive all such rights and benefits. In connection with such waiver and relinquishment, each Party acknowledges that it understands and is aware that:

- a. such Party may hereafter discover claims or causes of action with respect to the released items, but that it is the intention of each Party through this Mutual Release Agreement, to fully, finally and forever settle and release all of the matters compromised herein, notwithstanding the discovery of any additional or different fact or facts relating thereto; and/or
- b. the facts in respect of which the foregoing releases are given may hereafter turn out to be other than or different from the facts now known to each Party or believed by each Party to be true, and each Party expressly assumes the risk of the facts turning out to be so different and agree that the foregoing releases shall be in all respects effective and not subject to termination or rescission by any such difference in facts.

10. Execution and Delivery of Dismissals With Prejudice. Contemporaneously with the execution of this Mutual Release Agreement, each of the Parties hereto will deliver to their respective counsel for filing with the appropriate Court signed requests for dismissals with prejudice of their claims against each other all actions or matters pending (the “Dismissals”), which Dismissals shall be in the forms set forth collectively in Exhibit “1” hereto, and which Dismissals shall be filed as soon as practicable after the happening of all of the Events of Effectiveness on or before the Conditional Effective Date, with the exception of the Dismissal of the District Court Action as between and among Greenwood, Sunnyvale, and Republic, which Dismissal shall be filed after the disbursement of the escrow funds as described below.

11. Execution and Delivery of Escrow Instructions. Contemporaneously with the execution of this Mutual Release Agreement by all Parties, escrow instructions executed by Greenwood and Sunnyvale in the form of Exhibit “2” hereto shall be signed by Greenwood and Sunnyvale, directing Republic to disburse the sum of \$150,000.00, minus the reasonable expenses incurred by Republic in performing its duties as escrow agent, half to Greenwood and half to Sunnyvale (which half is to be actually paid directly to the Receiver), which instructions shall be delivered to Republic as soon as practicable after the happening of all of the Events of Effectiveness on or before the Conditional Effective Date, and in return for which disbursement, the Dismissal With Prejudice of the District Court Action and the Partial Appeal of the District Court Action as between and among Greenwood, Sunnyvale, and Republic shall be filed as soon as practicable after such receipt.
12. Choice of Law and Enforcement/Exclusive Bankruptcy Jurisdiction as to Sunnyvale and Receiver/Waiver of Right to Trial by Jury. This Mutual Release Agreement is entered into under and shall be construed and enforced in accordance with the law of the State of California, and shall not be interpreted with regard to who prepared the agreement and shall be interpreted as though all Parties participated equally in its preparation and each party shall be deemed to have participated, negotiation and drafted this Settlement Agreement. The headings used in this Mutual Release Agreement are for reference only and shall not affect the construction of this Mutual Release Agreement. The Parties agree that any dispute or request for interpretation or any other litigable matter arising under this Agreement and/or any document created or arising hereunder shall, as to Sunnyvale and the Receiver, be within the exclusive jurisdiction of the Bankruptcy Court, provided that Sunnyvale is, at the time of the happening of such event or matter, still subject to the jurisdiction of the Bankruptcy Court, and shall, as to all other Parties (and, as applicable, to Sunnyvale and the Receiver if, at the time of the happening of such event or matter, Sunnyvale is not still subject to the jurisdiction of the Bankruptcy Court), be within the jurisdiction of any state or federal court located within the State of California where jurisdiction can be obtained as to the Parties to such dispute, request for interpretation, or other litigable matter. THE PARTIES KNOWINGLY AND EXPLICITLY, AND BASED UPON ADVICE OF COUNSEL, WAIVE ANY RIGHT TO A TRIAL BY JURY AS TO ANY LITIGABLE MATTER ARISING HEREUNDER.
13. No Other Representations or Warranties.. Each party acknowledges that no other party or any agent or attorney of any other party has made any promise, representation or warranties whatsoever, express or implied, not contained herein concerning the subject matter hereof to induce it to enter into and to execute this Agreement, and each party acknowledges that it has not executed this Agreement in reliance upon any promise, representation or warranty not contained herein. All agreements, covenants, representations and warranties, express and implied, oral and written, of the Parties to this agreement concerning the releases set forth herein are contained herein. This Mutual Release Agreement may not be modified or amended except by written instrument, signed by each of the Parties hereto, expressing such an amendment or modification.
14. Acknowledgement of Independent Counsel and Advice. Each party acknowledges that it is represented by independent legal counsel of its own choice and that it has executed this Agreement with the consent and on the advice of such independent legal counsel. Each party further acknowledges that it, and its counsel, has had adequate opportunity to conduct whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of

this Agreement prior to the execution hereof. Each party shall bear their own attorney's fees and costs.

15. No Admission of Liability. The execution or performance of any of the terms of this Mutual Release Agreement shall not constitute or be construed as an admission of liability by any Party hereto. The Parties hereto understand and agree that liability for the matters alleged in the various matters described herein is disputed by each of the Parties released in this Mutual Release Agreement, and that this Mutual Release Agreement is a compromise and shall not be construed as an admission of liability with respect to the matters alleged.
16. Representation of No Prior Assignment of Claims. Each Party represents and warrants to each other Party that such Party has not heretofore assigned, or otherwise transferred or purported to assign or otherwise transfer, in any manner, including by way of subrogation or operation of law or otherwise, any portion of any Claims released by this Mutual Release Agreement.
17. Agreement to Execute Additional Facilitating Documents. The Parties agree to execute any additional documents reasonably necessary to carry out the intent of this Mutual Release Agreement or any of its items including, but not limited to, the Dismissals With Prejudice and the mutual escrow instruction which are appended hereto as exhibits.
18. Incorporation of Recitals. Any recitals stated above are incorporated herein as part of this agreement as though set forth in full.
19. Severability of Provisions. In the event that any provision of this Mutual Release Agreement should be held by a court of competent jurisdiction to be void, voidable, illegal or unenforceable in any respect, the remaining portions thereof and provisions hereof shall nevertheless remain in full force and effect, as if such void, voidable, illegal or unenforceable provision had never been contained in this Mutual Release Agreement.
20. Execution in Counterparts. This Mutual Release Agreement may be executed in counterparts, which taken together shall constitute one agreement. Subject to the happening of each of the Events for Effectiveness on or before the Conditional Effective Date as set forth herein, this Mutual Release Agreement shall be effective as to each Party who executes same as of and on the date signed as set forth below, and delivered to the other Parties hereto. Facsimile copies of signatures shall be effective upon transmission, and the receipt of a facsimile copy containing a signature shall be effective and treated as an executed original.

IN WITNESS WHEREOF, the undersigned have executed this Mutual Release Agreement on the respective dates set forth below and effective as to each as of the respective dates written below.

Agreed and Accepted:

[Signatures Continued on Next Page]

**HARVEST SV/PEN, LTD.,
a Texas limited partnership**

By: HARVEST SV/PEN GP, LLC,
a Texas limited liability company
general partner

By: _____
Name: Eliot B. Barnett
Title: Manager
Date: January ____, 2004

GREENWOOD PARTNERS

By: EBB INVESTMENTS, LLC
Its co-manager

By: _____
Name: Eliot B. Barnett
Title: Managing Member
Date: January ____, 2004

LEHMAN ALL, INC.

By: _____
Name: David S. Broderick
Title: Authorized Signatory
Date: January ____, 2004

**JAMES H. BARON,
Receiver of Sunnyvale, LLC**

Name: James H. Baron
Title: Receiver of Sunnyvale, LLC
Date: January ____, 2004

CITY OF SUNNYVALE, CALIFORNIA

By: _____
Name: John Howe
Title: Mayor
Date: January ____, 2004

**HARVEST SV/PEN GP, LLC,
a Texas limited liability company**

By: _____
Name: Eliot B. Barnett
Title: Manager
Date: January ____, 2004

SUNNYVALE, LLC

By: AMP-SUNNYVALE, LLC,
Its Managing Member

By: _____
Name: Jerald G. Schutte
Title: Manager of AMP-Sunnyvale, LLC
Date: January ____, 2004

**FORUM DEVELOPMENT GROUP, LLC,
a Georgia limited liability company**

By: _____
Name: _____
Title: _____
Date: January ____, 2004

**THE REDEVELOPMENT AGENCY FOR THE CITY OF
SUNNYVALE, CALIFORNIA**

By: _____
Name: John Howe
Title: Chairperson
Date: January ____, 2004